

1 Law Office of Kenneth Roye  
2 Kenneth P. Roye SBN 42572  
3 Joseph G. Astleford SBN 231494  
4 142 West 2<sup>nd</sup> Street, Suite B  
5 Chico, CA 95928  
6 Phone: 530-893-2398  
7 Fax: 530-893-2396  
8 Attorney for Claimants

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION; PACIFIC  
GAS AND ELECTRIC COMPANY**

**(Affects Both Debtors)**

**Case No. 19-30088 (DM)**

**Chapter 11**

**(Lead Case)**

**(Jointly Administered)**

**OBJECTION TO DEBTORS'  
MOTION PURSUANT TO 11 U.S.C.  
§§ 363(b) AND 105(a) AND FED. R.  
BANKR. P. 6004 AND 9019 FOR  
ENTRY OF AN ORDER (I)  
AUTHORIZING THE DEBTORS  
AND TCC TO ENTER INTO  
RESTRUCTURING SUPPORT  
AGREEMENT WITH THE TCC,  
CONSENTING FIRE CLAIMANT  
PROFESSIONALS, AND  
SHAREHOLDER PROPONENTS,  
AND (II) GRANTING RELATED  
RELIEF [DOCKET NO. 5038]**

**DATE: DECEMBER 17, 2019  
TIME: 2:00 P.M.  
CTRM: 17  
JUDGE: DENNIS MONTALI**

1 Camp Fire Claimants, represented by the Law Offices of Kenneth Roye,  
2 (“Camp Fire Claimants” hereafter), by and through their attorneys, Kenneth  
3 Roye and Joseph Astleford, hereby Object to Debtors’ Motion Pursuant to 11  
4 U.S.C. §§ 363(b) and 105(a) and FED. R. BANKR. P. 6004 and 9019 for entry  
5 of an order (I) Authorizing the Debtors and TCC to enter into restructuring  
6 support agreement (“RSA” hereafter) with the TCC, consenting fire claimant  
7 professionals, and shareholder proponents, and (II) Granting related relief.  
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- 11 1. The Law Office of Kenneth Roye represents 284 individuals and 4  
12 businesses that were damaged in the Camp Fire. It represents one individual  
13 in the Butte Fire whose matter has been successfully mediated. The  
14 outstanding individual in the Butte Fire was a minor at the time of the  
15 settlement and was waiting on court approval at the time debtor filed  
16 bankruptcy. (“Roye Plaintiffs” hereafter). The Law Office of Kenneth Roye  
17 does not represent any victims of the North Bay Fires or any other creditors.  
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- 21 2. The Roye Plaintiffs come before this court objecting to the proposed RSA  
22 on the basis that the victims of the deadly fires caused by debtor, PG&E,  
23 should not be forced to take stock as part of their compensation. Further, the  
24 Roye Plaintiffs object to this RSA in that it allows the insurance carriers to  
25 receive a settlement made entirely of cash. It is those same insurance  
26 carriers that are better equipped and should take stock if PG&E must issue  
27  
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1 stock to satisfy its obligations, not the victims of the fires caused by debtor.

2 The Roye Plaintiffs also object in that the RSA does not address significant  
3 liability issues with the Tubbs Fire. Finally, there has been no determination  
4 of the application of the made whole rule.  
5

- 6
- 7 3. The proposed RSA requires fire victims to take PG&E stock as part of their  
8 compensation. This is a failing company with volatile stock values. It is the  
9 individuals who have felt the most impact of these fires and will be forced to  
10 rely on the financial viability of the company that destroyed their towns,  
11 their way of life and their lives. Why should subrogating insurers receive all  
12 cash and not have to take the risk of both the volatility of debtor's stock and  
13 the volatility of the entire stock market? These subrogating insurance  
14 companies are experienced in managing large portfolios of various  
15 securities, including stocks.  
16
- 17 4. The liability in the Tubbs Fire case must be established by a fully and fairly  
18 contested liability trial. After a year-long investigation, CalFire determined  
19 that the Tubbs Fire "was caused by a private electrical system adjacent to a  
20 residential structure," and that there were no violations of the Public  
21 Resources Code. This Code and its regulations form the basis of most utility  
22 caused fire liability findings. This Court must assure itself that the defense  
23 of the Tubbs Fire liability case will be presented with skill and integrity.  
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1 The current liability trial should proceed so evidence is presented and a  
2 finder of facts is able to determine the liability of PG&E.  
3

4 5. Have the subrogating insurers in this case performed any analysis whether  
5 their insureds have been made whole? An analysis should be made and  
6 proven to this Court as a condition of the approval of their entitlement to  
7 share in the bankruptcy proceeds.  
8

9 6. The Made Whole Rule in California:  
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11 A. *Sapiano v. Williamsburg National Insurance Co.*, 28 Cal.App.4th 533  
12 (1994).  
13

14 This case was a declaratory relief action concerning a subrogation clause in  
15 a commercial vehicle policy. The insured contended that the insurers  
16 subrogation rights were subordinate “. . . until Sapiano was fully  
17 compensated for his property loss.” (p.536)  
18

19 In affirming the trial court’s ruling the Second District Division Four  
20 Appeals Court relied upon the “made whole rule.” Thus,  
21

22 The general rule is that an insurer that pays a  
23 portion of the debt owed to the insured is not  
24 entitled to subrogation for that portion of the debt  
25 until the debt is fully discharged. In other words,  
26 the entire debt must be paid. Until the creditor has  
27 been whole for its loss, the subrogee may not  
28 enforce its claim based on its right of subrogation.  
(Cites omitted). (p.536)

1 B. *Progressive West Insurance Co. v. Superior Court*, 135 Cal.App.4th  
2 263 (2005). This Third District case involved the subrogation rights of an  
3 insured under a medical payments provision of an automobile insurance  
4 policy. On review,  
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7 Progressive further argues the language of the  
8 policy abrogates the made whole rule because it  
9 states that in the event of payment under the  
10 policy, Progressive ‘is entitled to all the rights of  
11 recovery that the insured person to whom payment  
12 was made has against another.’ We reject this  
13 claim.

14 It is a general principal of insurance law that *absent an agreement to the*  
15 *contrary*, an insurance company may not enforce a right to subrogation until  
16 the insured has been fully compensated for (his or) her injuries, that is, has  
17 been made whole.” (Cites) (Cites omitted)

18 C. The general rule was restated by the Supreme Court in *Century*  
19 *Insurance Co. v. Superior Court*, 47 Cal.App.4<sup>th</sup> 511 (2009) at p.519. The  
20 Century Insurance case involved a question of whether an insured was not  
21 made whole because he or she had to bear the attorneys’ fees incurred in  
22 recovering damages not covered by the insurance contract.  
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3 **CONCLUSION**

4 The RSA provides for different treatment of fire victim claimants  
5 depending on which fire they were injured by and how they will be compensated  
6 in violation of 11 USC §1123(a)(4). Thus, adopting this settlement will impair the  
7 Debtor's ability to timely exit bankruptcy. It should not be adopted unless and  
8 until the issues raised herein are resolved.  
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11 Respectfully submitted:

12 Date: 12/16/19

13 Law Offices of Kenneth Roye

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17 By: Joseph G. Astleford  
18 Attorney for Claimants  
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